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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                           |   |
|---------------------------|---|
| Proceeding                | 91165449  |
| Party                     | Plaintiff<br>BOSE CORPORATION<br>BOSE CORPORATION<br>THE MOUNTAIN<br>FRAMINGHAM, MA 017019168                           |
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| Submission                | Opposition/Response to Motion   |
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| Date                      | 10/13/2006  |
| Attachments               | bose goldwave opposition.pdf ( 4 pages )(151830 bytes )   |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/413,775  
For the Mark GOLDWAVE  
Published in the Official Gazette on April 12, 2005

Bose Corporation,

Opposer,

v.

GoldWave Incorporated,

Applicant.

Opposition No. 91165449

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**BOSE CORPORATION'S OPPOSITION TO GOLDWAVE INC.'S MOTION TO  
EXTEND TESTIMONY AND REBUTTAL TESTIMONY DATES**

Bose Corporation ("Bose") hereby opposes GoldWave Inc.'s ("Goldwave") Motion to Extend Testimony and Rebuttal Dates ("Motion to Extend"). In support of its opposition, Bose states as follows.

**Background**

Goldwave's testimony period opened on September 20, 2006. Goldwave contacted Bose on September 26, 2006 for consent to take the oral deposition of Goldwave's witness, Mr. Chris Craig, in Canada on October 11, 2006, citing 37 C.F.R. § 2.123(a)(2) stating that the testimony of a witness residing in a foreign country "shall be taken by deposition upon written

questions...unless...the Board, upon motion for good cause, orders that the deposition be taken by oral examination, or the parties so stipulate.” 37 C.F.R. § 2.123(a)(2). Bose notified Goldwave on October 6, 2006 that it would not stipulate to the oral deposition of Mr. Craig in Canada.

On October 10, 2006, Goldwave filed with the Board a notice of deposition upon written questions of Mr. Craig in Canada for October 19, 2006 (the “Notice”). To date, Bose has never received the Notice or the Motion being opposed. Bose only learned of the Notice and the Motion only when it saw the Notice and Motion on the Board’s TTABVUE website. At the same time it filed its Notice with the Board, Goldwave filed a motion to extend its testimony and Bose’s rebuttal testimony dates, claiming that Goldwave has been “trying to complete the deposition of Mr. Craig orally” but that due to a communication problem between Goldwave and Goldwave’s counsel regarding the proposed October 11, 2006 oral deposition date, Mr. Craig was ultimately not available on that day. Therefore, Goldwave states, it should be allowed to take the deposition upon written questions of Mr. Craig, and requires additional time “to allow the parties to conduct testimony or reach an amicable solution of their dispute.”

Bose has objected to Goldwave’s Notice seeking to take the deposition upon written questions of Mr. Craig and now opposes Goldwave’s Motion to Extend.

### **Argument**

Bose has objected to Goldwave’s Notice seeking to take the deposition upon written questions of Mr. Craig because Bose was never properly served with the Notice, and also because the Notice, even if it had been properly served on Bose, is dated October 10, 2006, more than ten (10) days after the September 20, 2006 opening of Goldwave’s testimony period,

Applicant : GoldWave Incorporated  
Serial No. : 78/413,775  
Filed: : May 5, 2004  
Mark : GOLDWAVE  
Page : 3

Attorney's Docket No.: 02103-708PP1

contrary to 37 C.F.R. § 2.124(b)(1) which states "A party desiring to take a testimonial deposition upon written questions shall serve notice thereof upon each adverse party within ten days from the opening date of the testimony period of the party who serves the notice." 37 C.F.R. § 2.124(b)(1). In addition, the Notice fails to specify the address of the deponent, and fails to include a copy of the written questions to be propounded pursuant to 37 C.F.R. §§ 2.124(b)(1) and 2.124(d)(1).

Goldwave's failure to timely and properly notice the deposition upon written questions of its witness Mr. Craig cannot be cured by the addition of more time to Goldwave's testimony period. Moreover, Goldwave's purported internal miscommunication regarding the proposed October 11, 2006 date to take Mr. Craig's *oral* deposition, a deposition that Bose did not stipulate to in any case, is not good cause for why Goldwave should be allowed to ignore the notice requirements of 37 C.F.R. § 2.124(b)(1) and proceed with a deposition upon written questions at this stage.

In addition, Goldwave's assertion that the extension of its testimony period is merited where it will "allow the parties additional time to conduct testimony or reach an amicable solution of their dispute" does not state good cause. Goldwave rejected Bose's attempt to reach an amicable solution of the dispute, and no attempts are contemplated. Bose, having taken testimony during its testimony period, does not require additional time to take testimony.

Goldwave can notice taking the oral deposition of Mr. Craig in the United States before the close of Goldwave's testimony period.

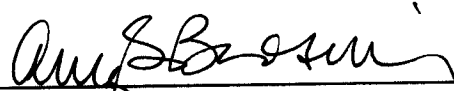
For the reasons stated, Bose respectfully requests that the Board deny Goldwave's Motion to Extend.

Applicant : GoldWave Incorporated  
Serial No. : 78/413,775  
Filed: : May 5, 2004  
Mark : GOLDWAVE  
Page : 4

Attorney's Docket No.: 02103-708PP1

Respectfully submitted,

Date: October 13, 2006



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Attorneys for Opposer,  
BOSE CORPORATION

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#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing BOSE CORPORATION'S OPPOSITION TO GOLDWAVE INC.'S MOTION TO EXTEND TESTIMONY AND REBUTTAL TESTIMONY DATES has this 13<sup>th</sup> day of October 2006 been mailed by prepaid first class mail to the below-identified Attorney at his/her place of business:

Ms. Mylene Dao  
Flansberry, Menard & Associates  
506 Kent Street  
Ottawa, Ontario  
K2P 2B9  
CANADA

  
Amy L. Brosius